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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 RICHARD P. KRETT,

11 Plaintiff,

12 v.

13 ALLSTATE INSURANCE COMPANY,

14 Defendant.

CASE NO. C13-0131RSL

ORDER DENYING MOTION TO
BIFURCATE PROCEEDINGS

15 This matter comes before the Court on “Defendant Allstate Insurance Company’s
16 Motion to Bifurcate.” Dkt. # 14. Having reviewed the memoranda, declarations, and
17 exhibits submitted by the parties, the Court finds as follows:

18 Plaintiff was involved in a car accident in April 2008. The other driver, Michael
19 Ray, paid plaintiff the \$50,000 limit of his automobile insurance policy. Plaintiff
20 contends that this amount did not fully compensate him for injuries sustained in the
21 accident and submitted a claim for underinsured motorist (“UIM”) benefits to his own
22 insurer, defendant Allstate. When the parties could not reach agreement regarding the
23 payment of UIM benefits, plaintiff filed this action alleging that Allstate breached the
24 insurance policy and handled the UIM claim in bad faith.

25 Allstate has moved to bifurcate, requesting that the Court stay discovery and trial
26 of the bad faith claims until the UIM claim has been resolved. Allstate argues that the
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1 cause and value of plaintiff's claimed injuries can and should be resolved without
2 reference to Allstate's claim file and any privileged materials contained therein and that
3 the sequential consideration of the two types of claims will promote judicial economy.

4 Rule 42(b) of the Federal Rules of Civil Procedure governs bifurcation:

5 **Separate Trials.** For convenience, to avoid prejudice, or to expedite and
economize, the court may order a separate trial of one or more separate
6 issues, claims, crossclaims, counterclaims, or third-party claims. . . .

7 A court's decision on bifurcation is committed to its discretion. Danjaq LLC v. Sony
8 Corp., 263 F.3d 942, 962 (9th Cir. 2001). Nonetheless, separate trials are the exception,
9 not the rule, and this Court will not bifurcate without a good reason. Bifurcation is
10 occasionally in everyone's interest. For example, when a first trial on relatively
11 straightforward issues might (depending on the outcome) eliminate the need for a trial on
12 more complex issues, bifurcation may be ordered. Karpenski v. Am. Gen. Life Cos., 916
13 F. Supp.2d 1188, 1190 (W.D. Wash. 2012) (where rescission claim would dispose of the
14 entire case, determining whether a contract exists in the first place should be determined
15 first). Similarly, where a case presents one set of issues that can be conveniently tried to
16 a jury and another set that can be conveniently tried to the court, bifurcation may be
17 appropriate. Tavakoli v. Allstate Property & Cas. Ins. Co., 2012 WL 1903666, at *7
18 (W.D. Wash. May 25, 2012). A court can also bifurcate where the evidence necessary to
19 prove one claim poses a significant threat of confusing or prejudicing the jury as it
20 considers other claims. Hirst v. Gertzen, 676 F.2d 1252, 1261 (9th Cir. 1982).

21 Allstate offers three justifications for bifurcation. First, it contends that the issues
22 and evidence required to resolve the UIM benefitis claim are completely separate and
23 distinct from that involved in litigating the bad faith claims. Second, it contends that the
24 introduction of documents from Allstate's claim file showing its determinations regarding
25 causation and valuation would be unfair to Allstate and/or would prejudice the jury's
26 consideration of those issues. Finally, Allstate argues that bifurcation will promote

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1 judicial economy because if the first jury were to find that plaintiff's injuries were not
2 causally related to the April 2008 accident or that he had already been fully compensated
3 for the injuries suffered, there would be no need for a second-phase trial on the bad faith
4 issues.

5 The first justification is unpersuasive. The Court does not, as a matter of course,
6 bifurcate into separate trials every case in which distinct claims are asserted or which
7 raise successive potentially dispositive issues. In the run-of-the-mill case, the time and
8 expense associated with multiple discovery periods and trials outweighs any benefits
9 from bifurcation, even if the claims asserted rely on different theories and/or require
10 different evidence. In this case, the line between the two types of claims is not as wide or
11 bright as Allstate would have it. Although Allstate argues that its claim file is completely
12 irrelevant to plaintiff's UIM claim, there is no reason to assume that is true. If, for
13 example, Allstate obtained a statement from the police officer who investigated the
14 accident or plaintiff's physician regarding plaintiff's injuries, the statement could be
15 relevant to both causation and the sufficiency of Allstate's claims handling processes.

16 Allstate's second concern carries more weight. In the course of considering
17 plaintiff's claim, it is likely that Allstate's employees offered their own causation and
18 valuation opinions regarding plaintiff's injuries. Those evaluations are now part of
19 Allstate's claim file, along with documentation regarding Allstate's negotiating positions
20 as it attempted to settle plaintiff's UIM claim. What value an adjuster placed on
21 plaintiff's claim is of little or no relevance to what value the jury assigns, yet admission
22 of such evidence could prejudice the jury's consideration of the issue. If the only issue to
23 be tried were plaintiff's claim for UIM coverage, some documents in the claim file may
24 be subject to a privilege, inadmissible under Fed. R. Ev. 408, and/or prejudicial. The
25 same evidence would be admissible, however, if the triable issues included whether

1 Allstate acted in bad faith by refusing to make a reasonable offer of compensation to its
2 insured.

3 Bifurcation is not the only means by which the Court can ameliorate the risk of
4 prejudice or jury confusion, however. The Court routinely instructs juries to disregard
5 evidence for one purpose while considering it for another. If the admission of certain
6 evidence would be so confusing or prejudicial that it could not be cured by instruction,
7 the Court can simply exclude the evidence and/or divide a single trial into consecutive
8 phases. These alternatives are not exhaustive, but simply show that bifurcation is not
9 always necessary to avoid the ills posited by defendant.

10 Finally, Allstate argues that bifurcation would promote judicial efficiency. The
11 Court disagrees. Even if the first jury were to find that Allstate did not breach the
12 coverage provisions of the UIM policy, that would not necessarily dispose of plaintiff's
13 bad faith claims. Insurers can act in bad faith even where they properly deny coverage or
14 compensation to their insureds. See Coventry Assocs. v. Am. States Ins. Co., 136 Wn.2d
15 269, 277-80 (1998) (reviewing examples of bad faith liability despite proper claim
16 denial). Moreover, a violation of Washington's insurance regulations may, in some
17 circumstances, constitute bad faith regardless of the coverage determination. Tank v.
18 State Farm Fire & Cas. Co., 105 Wn.2d 381, 386 (1996). Allstate has not demonstrated
19 that plaintiff's bad faith claim hinges on proof of an improper denial of benefits.

20 Given that a second phase would likely be necessary in any event, it is difficult to
21 discern any benefit that would arise from bifurcating discovery and conducting two trials.
22 The burdens of such a procedure, however, are obvious. It is much more expensive and
23 time consuming to resolve an action in two separate phases, particularly where Allstate
24 insists not only on separate trials, but on partitioning (or attempting to partition)
25 discovery. Although the increased expenses and time required for a two-phase
26 proceeding would fall on both parties, they would likely weigh more heavily on plaintiff

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1 given Allstate's superior financial resources. From the Court's perspective, overseeing
2 two rounds of discovery disputes, dispositive motions, jury selection/instruction, and trial
3 would be far less efficient and economical than trying all of plaintiff's claims together.

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5 For all of the foregoing reasons, the Court concludes that bifurcation is not
6 necessary to avoid prejudice to Allstate and that the proposed procedure would likely
7 increase costs and inefficiencies for the parties and the Court. Allstate's motion to
8 bifurcate (Dkt. # 14) is therefore DENIED.

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10 DATED this 26th day of September, 2013.

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12 Robert S. Lasnik
13 United States District Judge

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